Prescribed authority and form of certificate to be furnished under section 151(6) and section 152(6) .

72. For the purposes of sections 151(6) and 152(6),—

(*a*) the prescribed authority shall be the Reserve Bank of India or another authorised authority under current laws regulating foreign exchange transactions; and

(*b*) the certificate shall be furnished in Form No. 38.

Relief under section 157(1), when salary is paid in arrears or in advance, gratuity, etc..

73. (1) Where, the total income of an assessee for any tax year (referred to as the relevant tax year in this rule) is assessed at a rate higher than the rate at which it would otherwise have been assessed, on account of receipts in relevant tax year as specified in column B of the following Table, the relief admissible under section 157(1) shall be as specified in column C thereof:—

TABLE

Sl. No.	*Receipts*	*Relief*
A	*B*	*C*
1.	Any portion of salary received in arrears or in advance or, any portion of family pension received in arrears (herein referred to as the "additional salary" or "additional family pension", as the case may be).	Relief = A – B, if A exceeds B, where— A = C – D; B = Aggregate of E; E = F – G and the computation of relief shall be carried out in the following steps. *Step 1:* Where the additional salary or additional family pension relates to one or more tax years, the tax years to which the additional salary or additional family pension relates and the amount relating to each such tax year shall first be ascertained. *Step 2:* Calculate A = C – D, Where,— C = tax on total income of the relevant tax year; D = tax on total income, as reduced by the additional salary or additional family pension, as if the total income so reduced were the total income of the relevant tax year; and A = tax on the additional salary or additional family pension for the relevant tax year. *Step 3:* Calculate E = F – G, Where,— G = tax payable in respect of the total income of each tax year ascertained in *Step 1*; F = tax payable on the total income of such tax year as increased by the amount relating to such tax year as ascertained in *Step 1*, as if the total income so increased were the total income of that tax year; and E = tax on the additional salary or additional family pension for each tax year ascertained in *Step 1*. *Step 4:* B = aggregate of tax on the additional salary or additional family pension. Calculate "B" to be the total of tax on the additional salary or additional family pension, which was ascertained as E in *Step 3* for all tax years ascertained in *Step 1*.

2.	Gratuity received in respect of past services extending over a period of greater than or equal to five years but less than fifteen years	Relief = G × (R1-RAvg), if R1 exceeds R Avg Where,– G = gratuity received in the relevant tax year; R1 = average rate of tax on the total income including gratuity amount received in Y1; RAvg = (R2+R3)/2; R2 = average rate of tax on the total income for Y2 as increased by one-half of the gratuity received, as if the income so increased were the total income of that tax year; R3 = average rate of tax on the total income for Y3 as increased by one-half of the gratuity received, as if the income so increased were the total income of that tax year; Y1 = relevant tax year, Y2 = tax year immediately preceding Y1, and Y3 = tax year immediately preceding Y2.
3.	Gratuity received in respect of past services extending over a period of not less than fifteen years	Relief = G × (R1-RAvg), if R1 exceeds R Avg. Where,– G = gratuity received in the relevant tax year; R1 = average rate of tax on the total income including gratuity amount received in Y1; RAvg = (R2+R3+R4)/3; R2 = average rate of tax on the total income for Y2 as increased by one-third of the gratuity received, as if the income so increased were the total income of that tax year; R3= average rate of tax on the total income for Y3 as increased by one-third of the gratuity received, as if the income so increased were the total income of that tax year; R4 = average rate of tax on the total income for Y4 as increased by one-third of the gratuity received, as if the income so increased were the total income of that tax year; Y1 = relevant tax year; Y2 = tax year immediately preceding Y1; Y3 = tax year immediately preceding Y2; and Y4 = tax year immediately preceding Y3.
4.	Compensation received from the employer or the former employer at or in connection with the termination of employment after continuous service for not less than three years and where the unexpired portion of term of employment is also not less than three years	Relief = C × (R1–RAvg), if R1 exceeds R Avg. Where,– C = compensation amount received in the relevant tax year; R1 = average rate of tax on the total income including compensation amount received in Y1; RAvg =(R2+R3+R4)/3; R2= average rate of tax on the total income for Y2 as increased by one-third of the compensation amount received, as if the income so increased were the total income of that tax year; R3= average rate of tax on the total income for Y3 as increased by one-third of the compensation amount received, as if the income so increased were the total income of that tax year; R4= average rate of tax on the total income for Y4 as increased by one-third of the compensation amount received, as if the income so increased were the total income of that tax year; Y1 = relevant tax year; Y2 = tax year immediately preceding Y1; Y3 = tax year immediately preceding Y2; and Y4 = tax year immediately preceding Y3;

5.	Commutation of pension received	Relief = P × (R1–RAvg), if R1 exceeds R Avg. Where,– P = amount of commutation of pension; R1 = average rate of tax on the total income including amount of commutation of pension received in Y1; RAvg =(R2+R3+R4)/3; R2= average rate of tax on the total income for Y2 as increased by one-third of the amount of commutation of pension received, as if the income so increased were the total income of that tax year; R3= average rate of tax on the total income for Y3 as increased by one-third of the amount of commutation of pension received, as if the income so increased were the total income of that tax year; R4= Average rate of tax on the total income for Y4 as increased by one-third of the amount of commutation of pension received, as if the income so increased were the total income of that tax year; Y1 = relevant tax year; Y2 = tax year immediately preceding Y1; Y3 = tax year immediately preceding Y2; and Y4 = tax year immediately preceding Y3.

(2) In case of any other receipts, the Board may, having regard to the circumstances of the case, allow such relief as it deems fit.

(3) To claim relief under section 157(1), the assessee shall furnish the particulars specified in Form No. 39 on or before the due date specified under section 263(1)(*c*).

(4) Where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body, is entitled to relief under section 157(1), he may furnish the particulars specified in Form No. 39 to the person responsible for making the payment referred to in section 392(1).

Taxation of income from retirement benefit account maintained in a notified country.

74. (1) If a specified person has income accrued in a specified account or accounts during a tax year, such income shall, at his option, be included in his total income of the tax year in which income from the said account or accounts is taxed upon withdrawal or redemption, as the case may be, in the notified country.

(2) Where the option has been exercised by a specified person under sub-rule (1), the total income of the specified person for the tax year in which income is taxable under sub-rule (1) shall not include the income which, —

(*a*) has already been included in the total income of such specified person in any of the earlier tax years during which such income accrued and tax thereon has been paid in accordance with the provisions of the Act; or

(*b*) was not taxable in India, in the tax year during which such income accrued, on account of,—

(*i*) such specified person being a non-resident, or not ordinarily resident as referred to in section 6(13), during that tax year; or

(*ii*) application of the Double Taxation Avoidance Agreement, if any,

and the foreign tax paid on such income, if any, shall be ignored for the purposes of computation of the foreign tax credit under rule 76.

(3) The option under sub-rule (1) by the specified person shall be exercised,—

(*a*) in respect of all the specified accounts maintained by the specified person; and

(*b*) in Form No. 40, which shall be furnished on or before the due date specified under section 263(1)(*c*).

(4) In a case where the specified person becomes a non-resident during any relevant tax year, then—

(*a*) the option exercised under the sub-rule (1) shall be deemed to have never been exercised with effect from the relevant tax year; and

(*b*) the income which has accrued in the specified account or accounts during the period, beginning with the tax year in respect of which the option under the said sub-rule was exercised and ending with the tax year immediately preceding the relevant tax year, shall be taxable during the tax year immediately preceding the relevant tax year, and tax shall be paid on or before the due date of filing the return of income for the relevant tax year.

(5) Subject to the provisions of sub-rule (4), once the option is exercised for a specified account or accounts in respect of a tax year under sub-rule (1) in Form No. 40, it shall apply to all subsequent tax years and cannot be subsequently withdrawn for the tax year for which the option was exercised, or for any subsequent tax year.

(6) For this rule,—

(*a*) the expressions "notified country", "specified account" and "specified person" shall have the meanings respectively assigned to them in section 158(2);

(*b*) "relevant tax year" means the tax year during which the specified person becomes non-resident subsequent to the tax year in respect of which option under sub-rule (1) has been exercised.

Other documents and information to be provided for claiming double taxation relief under section 159(1) and (2) .

75. (1) For the purposes of claiming any double taxation relief under an agreement mentioned in section 159(1) or (2), the other documents and information to be provided by an assessee (not being a resident) under section 159(8)(*b*) shall be as per Form No. 41.

(2) The assessee shall keep and maintain such documents as are necessary to substantiate the information provided in Form No. 41 and the income-tax authority may call for the said documents to verify the claim of relief.

(3) An assessee, being a resident in India, for obtaining a certificate of residence for the purposes of an agreement referred to in section 159(1) and (2) shall make an application in Form No. 42 to the Assessing Officer.

(4) The Assessing Officer, on receipt of the application and on being satisfied in this behalf, shall issue a certificate of residence in Form No. 43.

Foreign tax credit.

76. (1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the tax year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule.

(2) In a case, where income on which foreign tax has been paid or deducted, is offered to tax in more than one tax year, credit of foreign tax shall be allowed across those tax years in the same proportion in which the income is offered to tax or assessed to tax in India.

(3) The foreign tax referred to in sub-rule (1) shall mean, —

(*a*) in respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 159, the tax covered under the said agreement;

(*b*) in respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in section 160(3)(*a*).

(4) The credit under sub-rule (1) shall be available against the amount of tax, surcharge and cess payable under the Act, but not in respect of any sum payable by way of interest, fee or penalty.

(5) No credit under sub-rule (1) shall be available in respect of any amount of foreign tax or part thereof, which is disputed in any manner by the assessee, subject to the provisions of sub-rule (6).

(6) If the assessee, within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed, the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India.

(7) The credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the following manner: —

(*a*) the credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income, so, however, that where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation, such excess shall be ignored;

(*b*) the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.

(8) In a case where any tax is payable under the provisions of section 206, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act other than the provisions of the said sections (herein referred to as the normal provisions).

(9) Where the amount of foreign tax credit available against the tax payable under the provisions of section 206 exceeds the amount of tax credit available against the normal provisions, then, while computing the amount of credit under section 206(1)(*m*) to (*p*) and section 206(2)(*e*) to (*h*), in respect of the taxes paid under section 206(1) and (2), as the case may be, such excess shall be ignored.

(10) Credit of any foreign tax shall be allowed on furnishing the following documents by the assessee:—

(*a*) a statement of income from the country or specified territory outside India offered for tax for the tax year and of foreign tax deducted or paid on such income in Form No. 44 and verified in the manner specified therein; and

(*b*) certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee, —

(*i*) from the tax authority of the country or specified territory outside India; or

(*ii*) from the person responsible for deduction of such tax; or

(*iii*) signed by the assessee.

(11) The certificate or statement furnished by the assessee in sub-rule (10)(*b*) shall be valid, if it is accompanied by—

(*a*) an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee; or

(*b*) proof of deduction, where the tax has been deducted.

(12) The statement in Form No. 44 referred to in sub-rule (10)(*a*) and the certificate or the statement referred to in sub-rule (10)(*b*) shall be furnished within twelve months from the end of the relevant tax year in which the income referred to in sub-rule (1) has been offered to tax or assessed to tax in India and the return for such tax year has been furnished within the time specified under section 263(1) or (4), subject to the provisions of sub-rule (13).

(13) Where the return has been furnished under section 263(6)(*a*), the statement in Form No. 44 referred to in sub-rule (10)(*a*) and the certificate or the statement referred to in sub-rule (10)(*b*), to the extent it relates to the income included in the updated return, shall be furnished on or before the date on which such return is furnished.

(14) Form No. 44 shall also be furnished in a case, where the carry backward of loss of the current year or revision of return or similar statement, the case may be, of any year or any other reason results in refund of foreign tax for which credit has been claimed in any tax year or tax years.

(15) For the purposes of sub-rule (6), the assessee shall furnish an intimation in Form No. 45 and evidence of settlement of dispute including evidence of payment of tax.

(16) Form No. 44 shall be verified by an accountant defined in section 515(3)(*b*), —

(*a*) where the assessee is a company; or

(*b*) in all other cases, where the amount of foreign tax paid outside India for a tax year equals or exceeds ` 1,00,000.

(17) Form No. 45 shall be verified by an accountant defined in section 515(3)(*b*) in a case, where Form No. 44 filed for the relevant tax year was required to be verified by an accountant under sub-rule (16).

(18) For the purposes of this rule the expression, "telegraphic transfer buying rate" shall have the meaning assigned to it in rule 207.

Meaning of expressions used in determination of arm's length price.

77. For the purpose of this rule and rules 78 to 84,—

(*a*) "associated enterprise" shall have the meaning assigned to it in section 162;

(*b*) "enterprise" shall have the meaning assigned to it in section 173(*b*) and shall, for the purposes of a specified domestic transaction, include a unit, or an enterprise, or an undertaking or a business of a person who undertakes such transaction;

(*c*) "property" includes goods, articles or things and intangible property;

(*d*) "services" include financial services;

(*e*) "transaction" includes a number of closely linked transactions; and

(*f*) "uncontrolled transaction" means a transaction between enterprises other than associated enterprises, whether resident or non-resident.

सत्यमेव जयते
कोष मूलो दण्ड:
INCOME TAX DEPARTMENT

Other method for determination of arm's length price.

78. For the purposes of section 165(1)(*f*), the other method for determination of the arm's length price in relation to an international transaction or a specified domestic transaction shall be any method which takes into account the price, which—

(*a*) has been charged or paid; or

(*b*) would have been charged or paid,

for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

सत्यमेव जयते
कोष मूलो दण्ड:
INCOME TAX DEPARTMENT

Determination of arm's length price under section 165.

79. (1) For the purposes of section 165(2), the arm's length price in relation to an international transaction or a specified domestic transaction shall be determined by any of the following methods provided in this sub-rule, being the most appropriate method, in the manner specified therein.

(*a*) comparable uncontrolled price method, by which, —

(*i*) the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transactions, is identified;

(*ii*) such price is adjusted to account for differences, if any, between an international transaction or a specified domestic transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market; and

(*iii*) the adjusted price arrived at under sub-clause (*ii*) is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction or the specified domestic transaction; or

(*b*) resale price method, by which, —

(*i*) the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;

(*ii*) such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

(*iii*) the price so arrived at is further reduced by the expenses incurred by the enterprise directly in connection with the purchase of property or obtaining of services;

(*iv*) the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market; and

(*v*) the adjusted price arrived at under sub-clause (*iv*) is taken to be an arm's length price in respect of the transaction of purchase of property or obtaining of the services by the enterprise from its associated enterprise; or

(*c*) cost plus method, by which, —

(*i*) the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise, are determined;

(*ii*) the amount of a normal gross profit mark-up on such costs (computed according to the same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction, or a number of such transactions, is determined;

(*iii*) the normal gross profit mark-up referred to in sub-clause (*ii*) is adjusted to take into account the functional and other differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market;

(*iv*) the costs referred to in sub-clause (*i*) are increased by the adjusted profit markup arrived at under sub-clause (*iii*); and

(*v*) the sum so arrived at is taken to be an arm's length price in relation to the supply of the property or provision of services by the enterprise; or

(*d*) profit split method, which may be applicable mainly, in, —

(*i*) an international transaction or a specified domestic transaction involving either the transfer of unique intangibles or unique and valuable contributions by each of the enterprises involved in the transaction; or

(*ii*) multiple international transactions or specified domestic transactions which are so inter-related that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction, under which the following two approaches may be used —

(*A*) contribution profit split method, by which, —

(*I*) the combined net profit of the associated enterprises arising from the international transaction or the specified domestic transaction in which they are engaged, is determined;

(*II*) the relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data, which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;

(III) the combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under sub-item (*II*); and

(IV) the profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction;

(*B*) residual profit split method, by which, —

(I) the combined net profit of the associated enterprises arising from the international transaction or the specified domestic transaction in which they are engaged, is determined;

(II) the combined net profit referred to in sub-item (*I*) may, in the first instance, be partially allocated to each enterprise so as to provide it with an arm's length return appropriate for the contributions which can be reliably benchmarked using comparable uncontrolled transactions;

(III) the residual net profit remaining after such allocation may be split amongst the enterprises in proportion to their relative contributions in the manner specified under items (*II*) and (*III*) of item (*A*); and

(IV) the aggregate of the net profit allocated to the enterprise for contributions which can be reliably benchmarked using comparable uncontrolled transactions in together with the residual net profit apportioned to that enterprise on the basis of its relative contributions shall be taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction; or

(*e*) transactional net margin method, by which,—

(*i*) the net profit margin realised by the enterprise from an international transaction or a specified domestic transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

(*ii*) the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

(*iii*) the net profit margin referred to in sub-clause (*ii*) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

(*iv*) the net profit margin realised by the enterprise and referred to in sub-clause (*i*) is established to be the same as the net profit margin referred to in sub-clause (*iii*); and

(*v*) the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction or the specified domestic transaction; or

(*f*) any other method as provided in rule 78.

(2) For the purposes of sub-rule (1), the comparability of an international transaction or a specified domestic transaction with an uncontrolled transaction shall be judged with reference to the following factors (herein referred to as the comparability factors):—

(*a*) the characteristics of the property transferred or services provided in either transaction;

(*b*) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;

(*c*) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions; and

(*d*) the conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location, depth and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development, level of competition and whether the markets are wholesale or retail.

(3) An uncontrolled transaction shall be comparable to an international transaction or a specified domestic transaction, if—

(*a*) none of the differences, if any, between the transactions being compared, or between the enterprises entering into such transactions, are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or

(*b*) reasonably accurate adjustments can be made to eliminate the material effects of such differences.

(4) The data to be used in analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be the data relating to the financial year (hereinafter in this rule and in rule 81 referred to as the current year) in which the international transaction or the specified domestic transaction.

(5) In a case where the most appropriate method for determination of the arm's length price of an international transaction or a specified domestic transaction is resale price method or costplus method or transactional net margin method, then, irrespective of anything contained in sub-rule (4), the data to be used for analysing the comparability of an uncontrolled transaction with an international transaction or a specified domestic transaction shall be—

(*a*) the data relating to the current year; or

(*b*) the data relating to the first preceding year, if the data relating to the current year is not available at the time of furnishing the return of income by the assessee for the tax year; and where the data relating to the current year is subsequently available at the time of determination of arm's length price of an international transaction or a specified domestic transaction during the course of any assessment proceeding for the tax year, then, such data shall be used for such determination irrespective of the fact that the data was not available at the time of furnishing the return of income of the relevant tax year.

कोष मूलो दण्ड:
INCOME TAX DEPARTMENT

Most appropriate method.

80. (1) For the purposes of section 165(2)(*a*), the most appropriate method shall be the method which is best suited to the facts and circumstances of each particular international transaction or specified domestic transaction and which provides the most reliable measure of an arm's length price in relation to the international transaction or the specified domestic transaction, as the case may be.

(2) The following factors shall be taken into account for selecting the most appropriate method: —

(*a*) the nature and class of the international transaction or the specified domestic transaction;

(*b*) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises;

(*c*) the availability, coverage and reliability of data necessary for application of the method;

(*d*) the degree of comparability existing between the international transaction or the specified domestic transaction and the uncontrolled transaction and between the enterprises entering into such transactions;

(*e*) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction or the specified domestic transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions; and

(*f*) the nature, extent and reliability of assumptions required to be made in application of a method.

सत्यमेव जयते
कोष मूलो दण्ड:
INCOME TAX DEPARTMENT

Determination of arm's length price in certain cases.

81. (1) Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method referred to in section 165(3)(*b*) results in determination of more than one price, the arm's length price in respect of such transactions shall be computed in accordance with the provisions of this rule.

(2) A dataset shall be constructed by placing the prices referred to in sub-rule (1) in an ascending order and the arm's length price shall be determined on the basis of the dataset so constructed.

(3) For the purposes of sub-rule (2), where the most appropriate method is the resale price method, cost plus method, or transactional net margin method, and where the comparable uncontrolled transaction undertaken by an enterprise, not being the enterprise undertaking such transactions referred to in sub-rule (1), has been identified using data relating to—

(*a*) the current year, and the said enterprise has undertaken the same or similar comparable uncontrolled transaction, in either or both of the two financial years immediately preceding the current year, then,—
  (*i*) the price in respect of such transaction in such year (or years) shall be determined by applying the most appropriate method in the similar manner as applied in the current year; and
  (*ii*) the weighted average of such prices, as computed under sub-rule (5), shall be included in the dataset under sub-rule (2) instead of price referred to in sub-rule (1);

(*b*) the financial year immediately preceding the current year (if the data relating to current tax year is not available at the time of furnishing return of income for that year), and the said enterprise has undertaken the same or similar comparable uncontrolled transaction in the financial year immediately preceding the two financial years, then—
  (*i*) the price in respect of such transaction shall be determined by applying the most appropriate method in the similar manner as it was applied in the financial year immediately preceding the current year; and
  (*ii*) the weighted average of such prices, as computed under sub-rule (5), shall be included in the dataset under sub-rule (2) instead of price referred to in sub-rule (1).

(4) Where the use of data relating to the current year, in terms of rule 79(5), establishes that—

(*a*) the enterprise has not undertaken the same or similar uncontrolled transaction during the current year; or

(*b*) the uncontrolled transaction undertaken during the current year is not a comparable uncontrolled transaction,

then, irrespective of anything else, neither the price nor the weighted average of prices of the comparable uncontrolled transactions shall be included in the dataset.

(5) Where an enterprise has undertaken comparable uncontrolled transactions in more than one financial year, the weighted average of the prices of such transactions for the purposes of sub-rules (2), (3) and (4) shall be computed based on the method used for determination of prices as specified in column B of the following Table and by assigning weights to the factors specified in column C thereof:—

TABLE

Sl. No.	*Method*	*Factors to which weight is assigned*
A	*B*	*C*
1.	Resale price method.	Quantum of sales considered for arriving at the respective prices.
2.	Cost plus method.	Quantum of costs considered for arriving at the respective prices.
3.	Transactional net margin method.	Quantum of costs incurred, sales effected, assets employed or to be employed, or any other base considered for arriving at the respective prices.

(6) Where the most appropriate method is comparable uncontrolled price method or resale price method or cost plus method or transactional net margin method and the dataset constructed in accordance with sub-rule (2) consists of six or more entries, an arm’s length range beginning from the 35th percentile of the dataset and ending on the 65th percentile of the dataset shall be constructed and, if the price at which the international transaction or the specified domestic transaction has actually been undertaken is —

(*a*) within such arm's length range, such price shall be deemed to be the arm's length price;

(*b*) outside such arm's length range, the median of the dataset shall be used to compute the arm's length price.

(7) Where the provisions of sub-rule (6) are not applicable, the arm’s length price shall be —

(*a*) the arithmetical mean of all the values included in the dataset; or

(*b*) the price at which such transaction has actually been undertaken, if the variation between the arm's length price so determined and the price at which the international transaction or the specified domestic transaction has actually been undertaken does not exceed such percentage, not exceeding 3% of the latter, as may be notified in this behalf by the Central Government.

(8) For the purposes of this rule,—

(*a*) "median" of the dataset, having values arranged in an ascending order, shall be —
  (*i*) the lowest value in the dataset where at least 50% of the values are less than or equal to it; or
  (*ii*) the arithmetic mean of such lowest value and the value immediately succeeding it in the dataset, if the number of all values that are equal to or less that the aforesaid value is a whole number;

(*b*) (*i*) "35th percentile" of a dataset, having values arranged in an ascending order, shall be—
  (*A*) the lowest value in the data-set such that at least 35% of the values included in the dataset are equal to or less than such value; or
  (*B*) the arithmetic mean of such lowest value and the value immediately succeeding it in the dataset, if the number of all values that are equal to or less that the aforesaid value is a whole number; and

(*ii*) "65th percentile" of a dataset, having values arranged in an ascending order, shall be—

(*A*) the lowest value in the data-set such that at least 65% of the values included in the dataset are equal to or less than such value; or

(*B*) the arithmetic mean of such lowest value and the value immediately succeeding it in the dataset, if the number of all values that are equal to or less that the aforesaid value is a whole number.

Illustration 1

Enterprise X has undertaken controlled transaction with its associated enterprises during the current year. After taking into account the facts and circumstances, transactional net margin method has been selected as the most appropriate method, enterprise X has been selected as the tested party, and the ratio of operating profit (OP) to operating expense (OE) has been selected as the profit level indicator (PLI). The data of the comparable uncontrolled transactions is available for the current year under consideration at the time of furnishing return of income by the assessee and based on the same, seven non-associated enterprises have been identified to have under-taken the comparable uncontrolled transactions in the current year. All the identified comparable enterprises have also undertaken comparable uncontrolled transactions in a period of two years preceding the current year. The weighted average PLI calculation for each non-associated enterprise shall be as follows:

Sl. No.	*Name of non-associated enterprise*	*Year 1*	*Year 2*	*Year 3 [Current Year]*	*Aggregation of OE and OP*	*Weighted Average PLI*
1	*2*	*3*	*4*	*5*	*6*	*7*
1.	A	OE = 100 OP = 12	OE = 150 OP = 10	OE = 225 OP = 35	Total OE = 475 Total OP = 57	OP/OE = 12%
2.	B	OE = 80 OP = 10	OE = 125 OP = 5	OE = 100 OP = 10	Total OE = 305 Total OP = 25	OP/OE = 8.2%
3.	C	OC=E = 250 OP = 22	OE = 230 OP = 26	OE = 250 OP = 18	Total OE = 730 Total OP = 66	OP/OE= 9%
4.	D	OE = 180 OP = (-) 9	OE= 220 OP = 22	OE = 150 OP = 20	Total OE = 550 Total OP = 33	OP/OE = 6%
5.	E	OE = 140 OP = 21	OE = 100 OP = (-) 8	OE = 125 OP = (-) 5	Total OE = 365 Total OP = 8	OP/OE = 2.2%
6.	F	OE = 160 OP = 21	OE= 120 OP = 14	OE = 140 OP = 15	Total OE = 420 Total OP = 50	OP/OE = 11.9%
7.	G	OE = 150 OP = 21	OE = 130 OP = 12	OE = 155 OP = 13	Total OE = 435 Total OP = 46	OP/OE = 10.57% .

From the above , the dataset will be constructed by arranging the weighted average values of PLI in an ascending order as follows:

Sl. No.	*1*	*2*	*3*	*4*	*5*	*6*	*7*
Values	2.2%	6%	8.2%	9%	10.57%	11.9%	12%

For deriving the arm's length range, the data place of 35th and 65th percentile shall be computed in the following manner:

Total number of data points in dataset × (35/100)

Total number of data points in dataset × (65/100)

Thus, the data place of the 35th percentile = 7 × 0.35 = 2.45.

Since this is not a whole number, the next higher data place, that is, the value at the 3rd place would have at least 35% of the values below it. The 35th percentile, is therefore, value at the 3rd place, that is, 8.2%.

The data place of the 65th percentile is = 7 × 0.65 = 4.55.

Since this is not a whole number, the next higher data place, that is, the value at the 5th place would have at least 65% of the values below it. The 65th percentile is therefore value at 5th place, that is, 10.57%.

The arm's length range will be beginning at 8.2% and ending at 10.57%.

Therefore, if the PLI in case of the enterprise X that has undertaken the international transaction or the specified domestic transaction is equal to or more than 8.2% and less than or equal to 10.57%, the price at which such international transaction or the specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price. No adjustment shall be required.

However, if the PLI in case of the enterprise X is lower than the 35th percentile of the arm's length range, that is, 8.2%, then for the purpose of determining the arm's length price, the median of the dataset shall be used. The median will be first determined in the following manner:

The data place of median is calculated by first computing the total number of data point in the dataset × (50/100). In this case it is 7 × 0.5 = 3.5.

Since this is not a whole number, the next higher data place, that is, the value at the 4th place in the dataset would have at least 50% of the values below it (median).

The median in this case is 9%. Therefore, the PLI at arm's length shall be 9% and the controlled transaction shall be adjusted so as to yield this PLI for the controlled enterprise X.

Illustration 2

In case of the Enterprise X referred to in Illustration 1, the data of the current year is available only in respect of non-associated enterprises A, C, E, F and G at the time of furnishing the return of income by the assessee. In respect of non-associated enterprises B and D, the data of the financial year preceding the tax year is available at the time of furnishing the return of income and the same has been used to identify comparable uncontrolled transactions undertaken by enterprises B and D. Further, if these seven non-associated enterprises have also undertaken comparable uncontrolled transactions in either or both of the two financial years immediately preceding the tax year then such data has been included in the dataset. The weighted average PLI calculation for each non-associated enterprise shall be as follows:

Sl. No.	*Name of non-associated enterprise*	*Year 1*	*Year 2*	*Year 3 [Tax Year]*	*Aggregation of OE and OP*	*Weighted Average PLI*
1	*2*	*3*	*4*	*5*	*6*	*7*
1.	A	OE = 100 OP = 12	OE = 150 OP = 10	OE = 225 OP = 35	Total OE = 475 Total OP = 57	OP/OE = 12%
2.	B	OE = 80 OP = 10	OE = 125 OP = 5	Data not available	Total OE = 205 Total OP = 15	OP/OE= 7.31%
3.	C	OE = 250 OP = 22	OE = 230 OP = 26	OE = 250 OP = 18	Total OE = 730 Total OP = 66	OP/OE = 9%
4.	D	Data not available	OE = 220 OP = 22	Data not available	Total OE = 220 Total OP = 22	OP/OE = 10%
5.	E	Data not available	Data not available	OE = 125 OP = (-) 5	Total OE = 125 Total OP = (-)5	OP/OE = (-) 4%
6.	F	OE = 160 OP = 21	OE = 120 OP = 14	OE = 140 OP = 15	Total OE = 420 Total OP = 50	OP/OE = 11.9%
7.	G	OE = 150 OP = 21	OE = 130 OP = 12	OE = 155 OE = 13	Total OE = 435 Total OP = 46	OP/OE= 10.57%

From the above, the dataset will be constructed by arranging the weighted average values of PLI in an ascending order as follows:

Sl. No.	*1*	*2*	*3*	*4*	*5*	*6*	*7*
Values	(-) 4%	7.31%	9%	10%	10.57%	11.9%	12%

If during the course of assessment proceedings, the data of the tax year becomes available and the use of such data indicates that non-associated enterprise B cannot be considered as a comparable under rule 79(3)(*ii*) and (*iii*), then the data in respect of enterprise B shall not be included in the dataset. The data for tax year in respect of enterprise D shall be included in the dataset. Further, if the data available at this stage identifies a new comparable uncontrolled transaction undertaken by enterprise H, then, it shall be included in the revised dataset. The weighted average PLI calculation for each non-associated enterprise shall be as below:

Sl. No.	*Name of non-associated enterprise*	*Year 1*	*Year 2*	*Year 3 [tax Year]*	*Aggregation of OE and OP*	*Weighted Average PLI*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
1.	A	OE = 100 OP = 12	OE = 150 OP = 10	OE = 225 OP = 35	Total OE = 475 Total OP = 57	OP/OE = 12%
2.	C	OE = 250 OP = 22	OE = 230 OP = 26	OE = 250 OP = 18	Total OE = 730 Total OP = 66	OP/OE = 9%
3.	D	Data not available	OE = 220 OP = 22	OE = 150 OP = 20	Total OE = 370 Total OP = 42	OP/OE =11.35%
4.	E	Data not available	Data not available	OC = 125 OP = (-) 5	Total OC = 125 Total OP = (-) 5	OP/OC = (-) 4%
5.	F	OC = 160 OP = 21	OC = 120 OP = 14	OC = 140 OP = 15	Total OC = 420 Total OP = 50	OP/OC = 11.9%
6.	G	OC = 150 OP = 21	OC = 130 OP = 12	OC = 155 OP = 13	Total OC = 435 Total OP = 46	OP/OC = 10.57%

7.	H	OC = 150	Data not available	OC = 80	Total OC = 230	OP/OC =9.56%
		OP = 12		OP = 10	Total OP = 22	

From the above, the dataset will be constructed by arranging the weighted average values of PLI in an ascending order as follows:

Sl. No.	*1*	*2*	*3*	*4*	*5*	*6*	*7*
Values	(-) 4%	9%	9.56%	10.57%	11.35%	11.9%	12%

The calculation of the arm's length range and the arm's length price shall then be performed in the same manner as that described in *Illustration 1*.

Illustration 3

In a given case, comparable uncontrolled price method has been selected as the most appropriate method and 20 comparable un-controlled transactions have been identified. The dataset of 20 prices, arranged in ascending order, is as under:

Sl. No.	*Profits (in* Rs. *Thousands)*
1	*2*
1.	42.00
2.	43.00
3.	44.00
4.	44.50
5.	45.00
6.	45.25
7.	47.00
8.	48.00
9.	48.15
10.	48.35
11.	48.45
12.	48.48
13.	48.50
14.	49.00
15.	49.10
16.	49.35
17.	49.50
18.	49.75
19.	50.00
20.	50.15

Applying the formula given in the *Illustration 1*, the data place of the 35th and 65th percentile is determined as follows:

35th percentile place = 20 × (35/100) = 7th.

65th percentile place = 20 × (65/100) = 13th.

Since the 35th percentile place is a whole number, it shall be the average of the prices at the 7th and next higher, that is, 8th place. This is (47000+48000)/2 = Rs. 47,500.

Similarly, the 65th percentile will be average of 13th and 14th place prices. This is (48500+49000)/2 = Rs. 48,750.

The median of the range (the 50th percentile place) = 20 × (50/100) = 10th.

Since the 50th percentile place is a whole number, it shall be the average of the prices at the 10th and next higher, that is, 11th place. This is (48350+48450)/2 = Rs. 48,400.

Thus, the arm's length range in this case shall be from Rs. 47,500 to Rs. 48,750.

Consequently, any controlled transaction whose price is equal to or more than Rs. 47,500 but less than or equal to Rs. 48,750 shall be considered to be within the arm's length range. If such price is not within the arm's length range, then, for the purpose of determining the arm's length price, the median of the dataset shall be used.

Exercise of option for determination of arm's length price for multiple years in a singleproceeding.

82. (1) The option or options as per section 166(9)(*a*) may be exercised by an assessee for determination of arm's length price for multiple year in a single proceeding by furnishing Form No. 46 for two consecutive tax years (the second tax year and the third tax year, respectively) immediately following the tax year (the first tax year) in respect of which reference has been made in its case under the said section.

(2) The Form No. 46 in respect of international transactions or specified domestic transactions shall be furnished, within the period, beginning from the end of the third tax year and ending on the 30th June succeeding the third tax year.

(3) Every Form No. 46 furnished in sub-rule (2) shall be accompanied by a certificate from the accountant, as defined in section 515(3)(*b*), in Form No. 47.

(4) In a case where the international transactions or the specified domestic transactions fulfil the conditions prescribed in sub-rule (5), the Transfer Pricing Officer shall, within one month from the end of month in which such option or options are exercised, pass an order, in writing, declaring whether the option or options exercised in Form No. 46 are valid or invalid.

(5) For the purposes of sub-rule (4) the prescribed conditions are as under, —

(*a*) the international transactions or the specified domestic transactions (herein referred to as the relevant transactions) in the second and third tax year for which option or options has been exercised in Form No. 46, should be similar to the international transactions or the specified domestic transactions in the first tax year;

(*b*) the relevant transactions shall be treated to be similar, if they satisfy the following conditions:—

- (*i*) there is no change in the method to determine the arm's length price for the relevant transactions;
- (*ii*) the functions performed, taking into account assets employed and the risks assumed, by the parties in respect of the relevant transactions remain materially consistent;
- (*iii*) in respect of the relevant transactions, the business activities, the relevant financial, tax, and accounting methods; and classification of the assessee, in case of a company, remained materially the same;
- (*iv*) the option or options exercise would be applicable even when there is a change in the business result or holding structure of the associated enterprise, or change in the associated enterprise, provided there is no material change in the relevant transaction and no material change in the functions performed, taking into account assets employed and the risks assumed; and
- (*v*) there is no change in the contractual terms (whether or not such terms are formal or in writing) of the relevant transactions, which explicitly or implicitly laid down how the responsibilities, risks and benefits are to be divided between the parties to the relevant transactions.

(*c*) the assessee has furnished in the first and the second tax years, —

- (*i*) report from the accountant under section 172 on or before the specified date referred to in that section; and
- (*ii*) return of income on or before the due date referred to in section 263(1);

(*d*) the assessee shall undertake to furnish for the third tax year, —

- (*i*) report from the accountant, as defined in section 515(3)(*b*), under section 172 on or before the specified date referred to in that section; and
- (*ii*) return of income on or before the due date referred to in section 263(1);

(*e*) the case of the assessee for the first, second and the third tax years is not covered under the provisions of Chapter XVI-B; and

(*f*) none of the associated enterprises relevant to the transactions is a resident of a jurisdiction which has been notified under section 176.

(6) If the assessee objects to the order of the Transfer Pricing Officer under sub-rule (4) declaring the option to be invalid, it may file its objections with the Commissioner, to whom the Transfer Pricing Officer is sub-ordinate, within fifteen days of receipt of the order of the Transfer Pricing Officer.

(7) On receipt of the objection referred to in sub-rule (6), the Commissioner shall after providing an opportunity of being heard to the assessee pass appropriate orders in respect of the validity, or otherwise, of the option exercised by the assessee and cause a copy of the said order to be served on the assessee and the Transfer Pricing Officer.

(8) In a case where, during the proceedings under section 166, it is found that the information provided by the assessee in the Form No. 46 is inaccurate or not *bona fide* or the accountant, as defined in section 515(3)(*b*), furnishes the certificate in Form No. 47 to the same effect or conditions as specified in sub-rule (5) are not met, the order passed under sub-rule (4) shall be cancelled.

(9) Before cancelling the order passed under sub-rule (4), the Transfer Pricing Officer shall give the assessee a reasonable opportunity of being heard and take the approval from the Commissioner before cancelling the order.

(10) Where the option or options exercised by the assessee, are declared as invalid under sub-rule (4) or the order passed under the said sub-rule is cancelled by the Transfer Pricing Officer, the Transfer Pricing Officer shall proceed to determine the arm's length price for the first tax year, for which reference has been received under section 166(1).

Time period for repatriation of excess money under section 170(2) and computation ofinterest income under section 170(4) pursuant to secondary adjustments.

83. (1) For the purposes of section 170(2)(*b*), the time limit for repatriation of excess money or part thereof in the circumstances mentioned in column B of the following Table shall be on or before ninety days from the date mentioned in column C thereof:

TABLE

Sl. No.	*Circumstances*	*Date*
A	*B*	*C*
1.	Primary adjustments to transfer price have been made *suo motu* by the assessee in his return of income.	Due date of furnishing of return under section 263(1).
2.	Primary adjustments to transfer price as determined in the order of Assessing Officer or the appellate authority has been accepted by the assessee.	Date of the order of Assessing Officer or the appellate authority, as the case may be.
3.	Primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 168 in respect of a tax year on or before the due date of furnishing of return for the relevant tax year.	Due date of furnishing of return under section 263(1).
4.	Primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 168 in respect of a tax year after the due date of furnishing of return for the relevant tax year.	End of the month in which the advance pricing agreement has been entered into.
5.	Option is exercised by the assessee as per the safe harbour rules under section 167.	Due date of furnishing of return under section 263(1).
6.	Primary adjustment to transfer price is determined by the resolution arrived at under mutual agreement procedure under a Double Taxation Avoidance Agreement entered into under section 159(1) or (2).	Date of order giving effect under rule 121(*10*) to such resolution.

(2) The imputed per annum interest income on excess money or part thereof, which is not repatriated within the time limit as per sub-rule (1) shall be computed —

(*a*) at the one-year marginal cost of fund lending rate of the State Bank of India as on the 1st April of the relevant tax year plus 325 basis points in the cases where the international transaction is denominated in Indian rupee; or

(*b*) at the reference rate of the relevant foreign currency, as defined in rule 89(3), as on the 30th September of the relevant tax year plus 300 basis points in the cases where the international transaction is denominated in foreign currency.

(3) The interest referred to in sub-rule (2) shall be chargeable on excess money or part thereof which is not repatriated in cases referred to in column B of the Table in sub-rule (1) from the date mentioned in column C thereof.

(4) For this rule, the exchange rate for conversion of the value of international transactions denominated in foreign currency into Indian rupees, shall be the telegraphic transfer buying rate of such currency on the last day of the tax year in which the transaction was undertaken and the "telegraphic transfer buying rate" shall have the meaning assigned to in rule 207.

Information and documents to be kept and maintained under section 171(1) .

84. (1) Every person who has entered into an international transaction or a specified domestic transaction, shall keep and maintain the following information and documents:—

(*a*) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises for the contemporaneous period;

(*b*) a profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence of each of the enterprises comprised in the group with whom international transaction or a specified domestic transaction, have been entered into by the assessee, and ownership linkages among them;

(*c*) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;

(*d*) the nature and terms (including prices) of international transaction or a specified domestic transaction entered into with each associated enterprise, details of property transferred or services provided and the quantum and the value of each such transaction or class of such transaction;

(*e*) a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated enterprises involved in the international transaction or the specified domestic transaction;

(*f*) a record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transaction or the specified domestic transaction entered into by the assessee;

(*g*) a record of uncontrolled transactions taken into account for analysing their comparability with the international transaction or a specified domestic transaction entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the international transaction or a specified domestic transaction, as the case may be;

(*h*) a record of the analysis performed to evaluate comparability of uncontrolled transactions with the international transaction or the specified domestic transaction;

(*i*) a description of the methods considered for determining the arm's length price in relation to each international transaction or specified domestic transaction or class of transactions, the method selected as the most appropriate method along with explanations as to why such method was so selected, and how such method was applied in each case;

(*j*) a record of the actual working carried out for determining the arm's length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the international transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions;

(*k*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm's length price;

(*l*) details of the adjustments, if any, made to transfer prices to align them with arm's length prices determined under these rules and consequent adjustment made to the total income for tax purposes; and

(*m*) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the arm's length price.

(2) Nothing contained in sub-rule (1) shall apply to an international transaction in a case where the aggregate value, as recorded in the books of account, of international transactions entered into by the assessee during the tax year does not exceed one crore rupees.

(3) For application of sub-rule (2), the assessee shall be required to substantiate, on the basis of material available, that income arising from international transactions entered into by him has been computed in accordance with section 161.

(4) The provisions of sub-rule (1) shall not apply to an eligible specified domestic transaction referred to in rule 96 in the case of an eligible assessee referred to in rule 95, and in such case—

(*a*) the eligible assessee, referred to in rule 95(*a*), shall keep and maintain the following information and documents: —

- (*i*) a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises for the contemporaneous period;
- (*ii*) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;
- (*iii*) the nature and terms (including prices) of specified domestic transactions entered into with each associated enterprise and the quantum and value of each such transaction or class of such transaction;
- (*iv*) a record of proceedings, if any, before a regulatory commission and orders of such commission relating to the specified domestic transaction;
- (*v*) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;
- (*vi*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price; and
- (*vii*) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price;

(*b*) the eligible assessee, referred to in rule 95(*b*), shall keep and maintain the following information and documents:—

- (*i*) a description of the ownership structure of the assessee cooperative society with details of shares or other ownership interest held therein by the members;
- (*ii*) description of members including their addresses and period of membership;
- (*iii*) the nature and terms (including prices) of specified domestic transactions entered into with each member and the quantum and value of each such transaction or class of such transaction;
- (*iv*) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;
- (*v*) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;
- (*vi*) the documentation regarding price being routinely declared in transparent manner and being available in public domain; and
- (*vii*) any other information, data or document which may be relevant for determination of the transfer price.

(5) The information specified in sub-rules (1) and (4) shall be supported by authentic documents, which may include the following: —

(*a*) official publications, reports, studies and data bases from the Government of the country of residence of the associated enterprise, or of any other country;

(*b*) reports of market research studies carried out and technical publications brought out by institutions of national or international repute;